APPEAL NO. 022392
FILED NOVEMBER 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 26, 2002. The hearing officer determined that the respondent's (claimant) compensable injury extends to and includes post-traumatic stress disorder (PTSD), and that the claimant's impairment rating (IR) is 26% as assigned by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor, including the PTSD. The appellant (carrier) appealed on sufficiency of the evidence grounds, arguing that the hearing officer erred in giving presumptive weight to the designated doctor's amended report that was not made in response to contact by the Commission, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)). The file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable electric shock injury to her right arm on _____, and that Dr. W was the Commission-appointed designated doctor. The claimant testified that due to the electric shock incident at work (she reached with her right hand into a fuse box to turn off a ceiling fan and was electrocuted at a 220 volts), she developed a fear of electrical cords, contemplated suicide, gained weight, and was depressed. The claimant stated that she sought treatment with a psychologist, Dr. R, to help her with her depression, anxieties, and fears. The medical records show that Dr. R diagnosed the claimant with PTSD on November 29, 2000, and continued to treat the claimant for PTSD until May 16, 2002. On February 13, 2001, Dr. W certified that the claimant reached maximum medical improvement (MMI) on September 12, 1999, with a 13% IR for the upper right extremity. On March 26, 2001, Dr. W amended her report and assigned a 26% IR based on her evaluation of Dr. R's medical records which included a diagnosis of PTSD. In a letter dated April 12, 2002, Dr. W explained to the Commission how she initiated contact with Dr. R through the claimant and why she changed the claimant's IR to 26%. Dr. W stated in her letter that "[a]s the patient was leaving, I told her to have her psychologist send me any appropriate medical records so that I could review them and if I felt that there could be additional inclusion for the psychological problem, then I would change her impairment." Dr. W stated that, based on Dr. R's medical records, she assessed a 15% whole person impairment for the PTSD, and "when combined with the 13 percent for the whole person impairment of the right upper extremity, she [assigned] a 26 percent whole person overall."

The carrier contends that the designated doctor's amended report was not made in response to contact by the Commission as required by Rule 130.6(i), and that

therefore the amended report should not be afforded presumptive weight and should be disregarded. Rule 130.6(i) provides that:

> The designated doctor shall respond to any commission requests for clarification not later than the fifth working day after the date on which the doctor receives the commission's request. The doctor's response is considered to have presumptive weight as it is part of the doctor's opinion. If, in order to respond to the request for clarification, the designated doctor has to re-examine the employee, the doctor shall make him/herself available to conduct the examination within 10 working days of receiving the request (even if it means traveling back to the location of the examination) and shall respond to the request for clarification not later than the fifth working day following the reexamination.

Rule 130.6(i) specifically provides that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight. After review of the record and the carrier's argument on appeal, we note that the carrier is seeking to apply Rule 130.6(i) incorrectly to the case at hand, as clarification from the designated doctor at the request of the Commission was not an issue before the hearing officer. We reject the carrier's argument that the amended report and IR are invalid because they were not made at the request of the Commission. Further, we note that Rule 130.5(d)(4)(C) provides that the designated doctor may initiate communication with any doctor who has previously treated or examined the employee for the work-related injury or with peer reviews identified by the carrier who examined the employee's claim.

The two issues in dispute were whether the compensable injury extends to and includes PTSD and what is the claimant's IR. The hearing officer determined that the claimant's compensable injury extends to and includes PTSD and that the claimant's IR is 26% as assigned by the designated doctor including PTSD. Rule 130.6(d)(5) provides:

> When the extent of the injury may not be agreed upon by the parties (based upon documentation provided by the treating doctor and/or carrier or the comments of the employee regarding his/her injury), the designated doctor shall provide multiple certifications of MMI and IR that take into account the various interpretations of the extent of the injury so that when the commission resolves the dispute, there is already an applicable certification of MMI and rating from which to pay benefits as required by the statute.

In this case, the designated doctor's reports provided ratings for the claimant's compensable right upper extremity injury and for the diagnosed PTSD, in accordance with Rule 130.6(d)(5). The hearing officer was persuaded that PTSD is included in the compensable injury, and he accepted the 26% IR assigned by the designated doctor for these conditions. Pursuant to Section 408.125(e), we afford presumptive weight to the

designated doctor's report in which she assigned a 26% IR for the claimant's compensable right upper extremity and PTSD conditions. The evidence sufficiently supports the hearing officer's determination that "the great weight of the other medical evidence is not contrary to the reports of the Commission designated doctor assigning Claimant a twenty-six percent whole body [IR] with [MMI] on September 12, 1999."

Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. We conclude that the hearing officer's extent-of-injury determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.

_____
Veronica Lopez
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Robert W. Potts
Appeals Judge